

FREDERICK COUNTY PLANNING COMMISSION
MEETING OF JUNE 14, 2006
9:30 a.m.

Members Present: Al Duke, Chairman, Robert White, Vice Chair; Joe Brown, Secretary; Joan McIntyre; Fern Hines; Denny Crum.

Staff Present: Mark Depo, Development Review Planning Director; Gary Hessong; Division of Permitting & Development Review Director; Michael Wilkins, Principal Planner; Justin Horman, Principal Planner; Stephen O'Philips, Principal Planner, Kathy Mitchell, Assistant County Attorney; Lori Barlet-Chapman, Substitute Recording Secretary.

1. MINUTES:

Mr. White made changes to the first page of minutes of May 10, 2006, Planning Commission Meeting. He made an announcement that the Town Center Library, The Villages of Urbana requested to be added to this agenda. Also, the vote for the minutes of this date was eight members and not seven, therefore, Yea 3, Nay 0, Hines abstained, Duke, Cady, and McIntyre absent. With the corrections Mr. White made a motion to approve the minutes from the May 10, 2006, Planning Commission meeting. 2nd by Mr. Brown.

Michael Cady, Commissioner Liaison arrived.

**Yea 4 Nay 0 (Mr. Duke, & Mr. Cady
Abstained)**

2. PLANNING COMMISSION COMMENTS:

Mr. Cady made comments from the Joint BOCC/BOE meeting June 13, 2006. Discussed was the process for approving developer funded schools. They determined there are a few improvements that need to be made to that process. In the Letters Of Understanding in the conditions they approve, they are including schools and the umbrella of roads, water sewer, conditions, and need to be conscious that schools don't always follow the same path, in that Escrow Funds for the schools as we do for the other types of infrastructure improvements. Mr. Cady stated that we need to be compliant with the process that is ultimately adopted by these two elected bodies.

3. AGENCY COMMENTS:

Mr. Hessong introduced a new Planner that was recently hired for the Division of Permitting & Development Review. Nikki Martin is filling the vacancy left by Gabrielle Collard.

Mr. Depo added an item for the June 21st, 2006 Planning Commission Agenda. Item #5, Miscellaneous Request for Rear Lot access /Neo- Traditional design Workshop. A new agenda will be included with the packet that will be received later today.

4. PRELIMINARY/FINAL PLATS

Hannover PUD, Lots 602A- 602C – Requesting Major Subdivision approval for a resubdivision of existing Lot 602 into three (3) lots. Located at the intersection of Ballenger Creek Pike and Mercantile Drive East. Zoned: Planned Unit Development (PUD), Frederick Planning Region. Tax Map 77/Parcel 4. File #S-810; Hansen #4051 (Michael Wilkins)

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings

Based upon the discussions in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Zoning, Subdivision, APFO, and FRO requirements. Staff has no objection to conditional approval of the plan.

Recommendation:

Should the FcPc approve this Application (S810, AP 4051) for the proposed new lots in a Major Subdivision, Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all staff and agency comments.
2. The Applicant shall add a note to the plat stating FcPc approval and date.
3. The Applicant shall record all common access easements prior to lot recordation, and note the recording reference on the plat.

Applicant Presentation:

Mr. K.C. Reed, Loiederman Soltesz & Associates representing the applicant presented the applicant's proposal.

Public Comment

N/A

Rebuttal:

Decision: Mr. Brown made a motion to grant conditional approval in accordance with the staff recommendations and adding a 4th recommendation that the plat note that the common entrance for

602A & B be labeled as right turn in and right turn out only. 2nd by Mr. White.

Yea 7 Nay 0

All parties and Staff wishing to give testimony in this matter were sworn in.

Wedgewood Business Park, Lot 21 – Requesting approval for one (1) new lot in a major subdivision. Located on the north side of Wedgewood Blvd, north of English Muffin Way. Zoned: (LI) Limited Industrial, Adamstown Planning Region. Tax Map 86/Parcel 237. File #S-903D; Hansen # 4588 (Michael Wilkins)

Staff Findings/Recommendations:

Findings

Based upon the discussions in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Zoning, Subdivision, APFO, and FRO requirements. Staff has no objection to conditional approval of the plan.

Recommendation:

Should the FcPc approve this Application (S903B, AP 4588) for the proposed new lot in a Major Subdivision, Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all staff and agency comments.
2. The Applicant shall add a note to the plat stating FcPc approval and date.
3. The Applicant shall meet the requirements of the FRO prior to plat recordation.
4. The entrance location(s) shall be determined at the time of site plan review (SP91-13)(AP# 4047). Plat and site plan must match.
5. Adequate Public Facilities Ordinance testing shall be conducted with the site plan (SP91-13)(AP# 4047). Should the APFO test fail, the subdivision of the property into Lot 20R and Lot 21 will be denied. The plat may not be recorded until the site plan is ready for final signature and approval and all required mitigation connected to APFO approval must be completed prior to lot recordation.

Applicant Presentation:

Mr. Martin Bucher, Loiederman Soltesz Associates, representing the applicant Devlin LLC, presented the applicant's proposal. He detailed that the entrance of Lot 20R already has its own existing entrance. Lot 21 has its entrance proposed. Common access easement is planned for the future at the same time Lot 20R would also like a 2nd access in and out that would be available. At that time they

would build up to the retaining wall. The lot was shown as a common access at this time, but it is for a future common access.

Public Comment

N/A

Rebuttal:

Decision: Mr. Brown made a motion to grant conditional approval in accordance with the staff recommendations 2nd by Mr. Crum.

Yea 6 Nay 1 (Hines Opposed)

5. AGRICULTURAL CLUSTER PLANS

McKinstry's Mill Lots 4 & 5 – Requesting approval of a two (2) lot Agricultural Cluster Concept Plan. Located on the east side of McKinstry's Mill Rd, north of the intersection with MD RT 31. Zoned: (AG) Agricultural, Walkersville Planning Region. Tax Map 52/Parcel 16. File #M-2696; Hansen #4715 (Michael Wilkins)

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings

Based upon the discussions in this report, Staff finds that the application meets and/or will meet all applicable Zoning, Subdivision, APFO, and FRO requirements. Staff has no objections to the proposed development.

Recommendation:

Should the FcPc approve this two- lot Agricultural Cluster Concept Plan application (M-2696, AP 4715), Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all staff and agency comments.
2. The Applicant shall add a note to plat stating FcPc approval and date.
3. The Agricultural Cluster Concept Plan shall become void at the end of 1 year from the date of approval unless a Combined Preliminary/Final Plat or Preliminary Plan has been submitted for approval.

Applicant Presentation:

Mr. Carl Pryor, Catocin Mountain Surveys representing the applicant John Williams, presented the applicant's proposal. Mr. Pryor concurred with the staff recommendations.

Public Comment

N/A

Rebuttal:

Decision: Mr. White made a motion to grant conditional approval in accordance with the staff recommendations 2nd by Ms. Hines.

Yea 7 Nay 0

6. SITE PLANS

Greenview PUD – Signature Club – Requesting Site Plan Approval for a 233 age restricted condominium (120 Single family detached, 94 single family attached duplex, and 19 townhouse units) development on 62.8 acres. Zoned: PUD, Located: On Mussetter Road north side of Old National Pike, 3,000 feet to the west of Boyers Mill Road, Tax Map: 79 Parcels 24 & 28, File #SP-99-26, Hansen #4916 (Mark Depo)

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings

Due to the expiration of the 2003 site plan, the applicant's changes (building locations, building setbacks, housing types, and building heights) to the 2003 site plan after the plan was approved by the FcPc and staff, the development being subject to the height and setbacks as stated and depicted on the approved site plan, the type of condominium development proposed by the applicant, and the uniqueness of the circumstances as mentioned in this report, the applicant was required to submit a new site plan for review. Staff is unaware of any recourse to these issue other then the submission of an amendment or reapproval of a site plan with appropriate fees following a decision on the miscellaneous request now before the FcPc.

As explained to the applicant, any changes to the approved site plan requires an amendment to the approved site plan to be submitted and to follow through the site plan review process to be heard by the FcPc. This is the standard process that has been followed in the County. By protesting this process, the applicant is essentially requesting to amend an approved site plan without following the proper procedures.

Furthermore, Staff was not given the authority or direction from FcPc to allow a height greater then 14 feet or allow the shift in the building locations that is in conflict with the approved and signed site plan.

Staff concurs with the applicant in that the height of the structures should be modified to allow for a height not exceed three stories – thirty (30) feet unless

otherwise approved by the Planning Commission as per Section 1-19-321(c)(3). Site Plan General Notes #5 should be revised accordingly.

Staff concurs with the applicant that there should be some flexibility in the placement of the building. But, a setback from the roadway (side or rear street) should still be required to allow for a more compatible design and a better street edge/view with the other buildings as per the approved site plan. Staff would recommend a setback consistent with the approved site plan with the ability to shift \pm two feet, while maintaining the 10 feet separation between buildings, to allow for architectural elements and grading issues that may arise during development. General Notes #13 should be revised accordingly.

The improvement plans do reflect the changes in the plan as stated in the report, however the changes occurred after the site plan was approved and signed and not during the initial site plan review and approval. Also, many of the changes proposed were in conflict with the 2003 approved and signed site plan. These changes, such as but not limited to, the type and number of units (total density remains the same), the street design, and the type and location of units (duplex to single family housing type and location changes) should be consistent between the improvement plans and the site plan.

Recommendation:

Should the Frederick County Planning Commission approve the site plan for the Signature Club at Greenview PUD for 233 age restricted condominium units, Staff recommends that the following items be added as conditions of approval:

1. The Applicant shall provide revised site plans and improvement plans that are consistent with one another, to be approved by staff.
2. The Applicant shall replace Site Plan General Notes #9 with the following statement: "The height of the buildings shall not exceed three stories – thirty (30) feet unless otherwise approved by the Planning Commission as per Section 1-19-321(c)(3)."
3. The Applicant shall replace General Note #13 with the following statement:
"BRL = Building Restriction Line
Property Line Setback: Front, Rear & Side – 25 feet,
Building Setback: Front Yard – Minimum 28 feet from curb, Rear and Street Side Yard – As Shown on Site Plan, shifts in building location must be approved by staff while maintaining a consistent building street edge.
Stream Buffer – 50 feet
Wetlands Buffer – 25 feet.
Building Separation – Minimum 10 feet."
4. The Applicant shall work with staff to provide appropriate street names that are not in conflict with existing County street names.
5. The Applicant shall address all remaining agency comments.
Proposed Change to Condition 3:

BRL = Building Restriction Line (Principal and accessory structures)
Rear and Side Street Yard – Minimum 15 feet from curb, however, no unit shall shift more than 6 feet from the approved site plan unless otherwise approved by staff while maintaining a consistent building street edge.

Applicant Presentation:

Mr. Scott Miller, Weinberg & Miller and Linda Dunoff, of CLSI spoke on behalf of the applicant Don Owens with OOMFM LLP. Mr. Miller generally concurs with the staff recommendations, but has some differences of opinions as how they got here as far as a re-approval of an approved site plan and whether this site plan has expired. It is their position that this site plan has not expired.

Mr. Don Owens clarified that there is the ability to have this community gated in the future and that they would have to work with the Fire Marshall's Office, which would have keys to the gate.

Public Comment

Mr. Bill Monotoski, contract holder with Signature Club. Spoke of concerns of being in temporary housing and the costs associated with that until new home is built.

Rebuttal:

Decision: Mr. Brown made a motion to grant conditional approval in accordance with the staff recommendations with the modifications of #3 as handed out by Mr. Scott Miller, and add a 6th recommendation that staff in the future will have the right to review the option of putting a gate up and see that proper agencies review it and agree to it. 2nd by Ms. McIntyre.

Yea 7 Nay 0

Break for 10 minutes

New Market Self Storage – Requesting re-approval of 77,877 sqft. Self-storage warehouse on 16.7 acres. Zoned: GC, located North side Rt. 144, 1/8 mile east of Mussetter Road in the Urbana Planning Region. Tax Map 79 /Parcel 52 & 53. File #SP-98-36 Hansen #4418 (Stephen O'Philips)

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings

The Staff finds, in accordance with the discussions in this report, plus the recommended conditions listed below, that the site plan application meets or will meet all requirements of Subdivision, Zoning, APFO and FRO Ordinance requirements.

Recommendation:

If the Planning Commission chooses to approve this application, the Staff recommends that the following conditions be added to the approval:

1. Correct miscellaneous drafting corrections as per Staff and Fire Marshal comments.
2. Amend signage lighting to be more consistent with the goals and intent of the Historic National Road designation for Rt. 144, as approved by Staff.
3. Provide affidavit indicating industrial loading is not required for this site.

Applicant Presentation:

Mr. Bruce Dean, McEvoy & Dean, representing the applicant with Fran Zeller, presented the applicant's proposal. Mr. Dean spoke of the National Road Corridor Plan that goes along Route 144, and feels that there needs to be some consistency in the Planning Department with Historic Signs. He stated his client would prefer to use internally lit signs due to cost, maintenance, electric costs, and visibility. He would like condition #2 of the Staff Recommendation removed.

Public Comment

N/A

Rebuttal:

Decision: Mr. Brown made a motion to grant conditional approval in accordance with the staff recommendations #1 & #3 and deleting #2. 2nd by Mr. White.

Yea 7 Nay 0

Villages of Urbana, Lot 270 Quasi Public Use Site – Requesting approval for revised site design for 8,000 sq.ft. Daycare and new approval for 5,650 sq. ft. Medical Building. on 3.75 acres. Zoned: PUD, located Southwest side of Campus Drive and Rt. 80. in the Urbana Planning Region.. Tax Map 96 /Parcel 270. File #SP-00-08 Hansen #4816 (Stephen O’Philips)

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings

The Staff finds, in accordance with the discussions in this report, plus the recommended conditions listed below, that the site plan application meets or will meet all requirements of Subdivision, Zoning, APFO and FRO Ordinance requirements.

Recommendation:

If the Planning Commission chooses to approve this application, the Staff recommends that the following conditions be added to the approval:

1. Provide affidavit that no industrial loading is needed for either building.
2. Add evergreen shrub screening to the daycare parking.
3. Amend FRO note to require deed recordation before permit release.
4. Comply with miscellaneous Agency check sheet items. Clarify on the plan lighting height (from ground to lens) and signage locations on the building elevations.

Applicant Presentation:

Mr. Mark Friis, Rodgers Consulting, representing the applicant with Krista McGowan, Miles & Stockbridge, Mark Ridenburg ARM Commercial, Rick Boyle, and Natelli Communities presented the applicant's proposal. Mary McQuillen was recognized for her help with the State Highway Administration to get this right in access approved. Would like approval and agrees to Staff Recommendations. Clarification was made on the parking issue with the Medical Office Building limiting the square footage that is devoted to specifically examination, treating room, office and waiting rooms that can be no greater than 4,700 sq. ft. Stephen O'Philips had referenced 5,600 sq. ft. in the Staff Report and his comments. The building itself is approximately 7,000 sq. feet. That is all based upon the 47 parking spaces that will be devoted to this use. There will be no shared parking.

Public Comment

Ms. Mary McQuillen, resident of Villages of Urbana. Spoke of the right turn in from Route 80 and approval from SHA. She also requested that the Addison Woods Road access be errantly closed and specific language be noted to the plat.

Rebuttal:

Decision: Mr. White made a motion to grant conditional approval in accordance with the staff recommendations with one modification to recommendation to #2 that changes evergreen and adds tree and shrub screening to the Daycare parking. 2nd by Ms.Hines.

Mr. Cady moved that the current motion be amended to add a new provision (#5) that any change of use of Lot 270 from the approval of these site plans be referred to the FcPc for affirmative action before they can take place. Without objection, the maker of the motion, and 2nd was accepted.

Yea 7 Nay 0

Wayman A.M.E. Church – Requesting Site Plan Approval 6,250 sq.ft. Place of Worship (Church) on 4 acres, situated at 9936 Liberty Road (Maryland Route 26). Zoned: Agriculture (AG) and Residential (R-1), Walkersville Planning Region, Tax Map 58 Parcel 298, FILE #SP-05-11 Hansen #3457 (Justin Horman)

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings

Based on the discussion in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Zoning, APFO and FRO requirements. Staff has no objection to conditional approval of the site plan.

Recommendation:

Should the Planning Commission conditionally approve this Site Plan (SP-05-11, AP 3457) for the proposed one story 6,250 sq.ft. Place of Worship/Church with 300 seats and 3 classrooms, Staff recommends that the following items be added as conditions of approval:

1. Note the decision of the Planning Commission for the entrance spacing modification under the site development data on the site plan.
2. Note the decision of the Planning Commission for the loading space modification under note 23 of the site development data on the site plan.
3. Applicant shall execute and provide joint access and maintenance agreement prior to site plan approval.
4. Applicant shall execute the proper documentation for FRO Banking prior to site plan signature.
5. Comply with all agency comments in Hansen through the completion of this project.

Applicant Presentation:

Mr. Rick Curry, B&R Design Group, representing the applicant presented the applicant's proposal; and requested approval for the entrance spacing modification and justification for the loading space. The 1 space provided would be sufficient. No objections to Staff comments and recommendation. Pastor Simmons of Wayman Church clarified the lighting situation at the church.

Public Comment

Mr. Robert Struck resident of Liberty Road, spoke of his access being restricted from Route 26, and he also had drainage concerns of water being diverted to his property. He would like restrictions on lighting and signs on his property, and shared concerns about noise, traffic, and water.

Rebuttal:

Mr. Rick Curry stated the ditches and storm drain would be directed to the East away from Mr. Struck's property, and the sign meets the requirements of the zoning ordinance and is set back 100 ft. from the roadway.

Mr. Cady spoke of water flow and the results of grading of the property.

Mr. Rick Curry: Water that is currently draining towards Mr. Struck's property is going to be drained away from the property because of grading, the ditches and storm drain system that will be installed.

Pastor Simmons: Stated that everything the church does to the property is to the benefit of the community. Have improved the property and want to ensure that their neighbors are not impacted negatively.

Mr. Struck: Water that used to go through the backyard is now going to be diverted to Route 26 run across the front of the house, around the house and down through the Rhoderick's backyard.

Mr. Rick Curry: Proposed drainage that is shown on plan will discharge into an existing ditch on Route 26 at the eastern edge of property. It is a very defined ditch that flows east on Route 26, not west; therefore none of this drainage will flow in front of this gentleman's house.

Public Comment

Pastor Simmons addressed Mr. Cady's comment about talking with neighbors prior to coming to a Planning Commission meeting. Pastor Simmons stated he did meet and discuss the proposal with the neighbor and he was against it.

Decision: Mr. White made a motion to grant conditional approval in accordance with the staff recommendations 2nd by Mr. Brown.

Mr. Cady made a motion to amend the original motion that a new condition be added that the applicant shall effectively address and mitigate added water flow onto the neighbor's property as a result of the grading of the church property. 2nd Mr. White.

Yea 5 Nay 2 (Brown & Duke Opposed)

Decision: Back to original motion which is a motion to grant conditional approval in accordance with staff recommendations and in accordance also with the condition added by the amendment.

Yea 6 Nay 1 (Brown opposed)

Break for Lunch at 12:20 p.m.

Resumed at 1:34

8. TEXT AMENDMENT REQUEST – AT-06-02 – (PUBLIC HEARING)

Adequate Public Facilities Ordinance Text Amendment -- Board of County Commissioners – Requesting an amendment to the Adequate Public Facilities Ordinance with certain changes to the (APFO) regarding school adequacy and other related matters. (Kathy Mitchell)

Mr. Crum arrived at 1:47 p.m.

Applicant Presentation:

Frederick County Public Schools employees Ray Barnes and Beth Pasierb presented test case scenarios to demonstrate how the proposed new Ordinance will be applied. They emphasized that this is not a final decision, it is a work in progress as to how this Ordinance is going to work and administered, and were looking for feedback. The BOE has met and submitted comments that are in the handouts. The BOE is proposing a collaboration committee be formed between the Planning Commission, BOCC, and themselves to work on this Amendment before any final decisions are made.

Mr. Cady made reference to the BOCC meeting the day prior, and stated that at the next BOCC/BOE joint meeting in July both bodies will be there, and that the Planning Commission is invited to attend, rather than form a collaboration committee.

Mr. Barnes gave an overview of how the APFO test is currently administered. Secondly, he spoke of the proposed test for school capacity and how it would be conducted under the new procedures proposed in the new Ordinance. Lastly, he presented three APFO test cases.

Mr. Rand Weinberg, Weinberg & Miller, commented on the presentation that Ray Barnes and Beth Pasierb did and how informative it was. He spoke of the percentages and State changing class sizes which affects the capacities. Secondly, he spoke of today's APFO and what was originally adopted in 1991 in regards to the redistricting provision. He also commented that there should be a de minimus exemption from the APFO schools test similar to the exception in the APFO roads test.

Ms. Krista McGowan, Miles & Stockbridge, commented on the Amendment and would like to know more about how the numbers work between the approved projects and other backgrounds as to make sure there is not double counting. She

spoke of the current application of the 2 year CIP rule and how it this provision should be kept, and also would like the redistricting provision to stay as well.

Ms. Kathy Mitchell commented on Mr. Weinberg and Ms. McGowan's comments on the 2-year CIP window. She stated that consideration of school construction projects planned in the first 2 years of the CIP is still in the proposed ordinance, but does not provide an automatic APFO approval for that school level.

Decision: Ms. McIntyre made a motion to forward this on to the BOCC with a recommendation for denial as written, and that the information presented by the BOE, FCPS and Rand Weinberg be taken into account, and the text from this meeting be forwarded to BOE & BOCC for review before the 2nd Tuesday meeting in July at 1:30. 2nd Mr. Cady.

Ms. Mitchell made clarifying comments.

**Yea 3 Nay 3 (Brown, White, and Hines (Opposed)
(Commissioner Cady abstained)**

Mr. Brown made a motion to recommend approval of the current text with taking into consideration that the FcPc feels that there are benefits to changing it as discussed today and as a joint meeting unveils. 2nd Mr. White.

**Yea 2 Nay 4 (McIntyre, Crum, Duke and Hines
Opposed) (Commissioner Cady abstained)**

Ms. McIntyre made a motion to forward it to the BOCC with no recommendation but the consensus was that we do have the joint meeting between the entities, and our staff, and the issues from today's meeting be forwarded to them so they could see them. No 2nd.

Mr. White made a motion to forward this to BOCC with no recommendation but with the statement that we believe that the proposal has positive aspects and that we also include a recommendation for further discussion of the problems of: (1) background and double counting, (2) considering a deminimus number of houses in developments that would be allowable without testing for APFO for schools, (4) the timing of the construction of new homes from a development, and (5) the effect

of changes in the State rated capacity, and (6) adding the 2 year CIP window for smaller developments. 2nd Ms. McIntyre.

Yea 7 Nay 0

Ms. Kathy Mitchell updated the Planning Commission on the width of Fire Access Roads as requested from May 10, 2006 FcPc Meeting. Mike Dmuchowski agreed to speak with Walter Murray about whether they would be willing to approve modifications to the State Fire Code requirements on a case-by-case basis. Kathy Mitchell and Staff agreed to update the FcPc on the progress.

Mr. Cady left the meeting at 3:47 p.m.

Adjourned at 3:54 p.m.

Respectfully Submitted,

Alan E. Duke; Chairman